IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 623 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
BALVANTSINH PARABATSINH JADAV & ORS

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Appearance :
MR IM PANDYA APP Appellant
MR ATUL H MEHTA for Opponents 1 - 3.
ABATED for Opponent No. 4

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 04/04/2007

ORAL JUDGMENT : **(Per : HONOURABLE MR.JUSTICE J.R.VORA)**

1 This Appeal is preferred by the State under Section 379 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge, Baroda, on 15th of February, 1986, in Sessions Case No. 60 of 1985 whereby all the four accused - respondents herein came to be acquitted for the offences punishable under Sections 452, 324, 323, 302, 342, 504 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act.

2 It appears that during the pendency of this Appeal, accused No.4 - respondent No.4 herein died and, hence, appeal came to be abated against respondent No.4 Hasmukhbhai Maganbhai Patel, vide order passed by this Court on 23rd of January, 1990.

3 The prosecution case is as under :

A complaint came to be filed by one Gangaben, wife of Raijibhai Shamalbhai Mali, before Baroda Taluka Police Station, on 30th of May, 1985. Accordingly, she stated that she was residing at Village – Sherkhi , Baroda Taluka. On 30th of May, 1985, at 2.00 p.m. she along with Revaben, wife of Bijalbhai Nathabhai , Surajben, wife of Dhayabhai Mahijibhai and her husband Raijibhai Shamalbhai Mali were in her house and were talking amongst themselves. At that time,

accused No.1 Balvantsinh Parabatsinh came to her house and he stated that where Khusal Shamal was. He further stated that Khusal Shamal had brought one wooden plank from the land belonged to Chimanbhai Patel Koyaliwalla (accused No.3 in the case). All of them including complainant stated to Balvantsinh Parabatsinh that if Khusal Shamal had taken wooden plank, he might be excused and they were prepared to make payment of the said wooden plank. They also offered Rs. 200/- to accused No.1 Balvantsinh Parabatsinh, but he refused and stated that he did not want any price for the wooden plank and that he would return with his brother Amrasinh Parabatsinh and he left thereafter the house of the complainant. On the same day at 4.00 p.m. accused No.1 Balvantsinh Parabatsinh with a dharia and accused No.2 Amrasinh Parabatsinh with a stick in their hands entered in the house of Khusal Shamal and started beating him. Complainant Gangaben and her husband Raijibhai intervened, but accused No.1 Balvantsinh Parabatsinh inflicted a blow of dharia on left thigh of Raijibhai. There were shouts and, therefore, one Devuben, wife of Chimanbhai Shamalbhai also came and she also intervened. Accused No.1 Balvantsinh Parabatsinh inflicted one dharia blow on the hand of Devuben. One Revaben, wife of Bijalbhai Nathabhai Mali, also attempted to intervene, but accused No.1 Balvantsinh Parabatsinh gave a blow of dharia on forehead of Revaben. She was also injured.

Surajben Dhayabhai was present at that time and accused No.2 Amrasinh Parvatbhai inflicted a stick blow on her face as well as accused No.1 Balvantsinh Parabatsinh also inflicted one blow on chin of Surajben with dharia and she fell down on the ground. Both of them started abusing and dragged and took Khusal Shamal in the field of Chimanbhai Patel - accused No.3 and Khusal was tied with electric pole in the said field. The cause of dispute as has been mentioned in the complaint was, Khusal Shamal had taken one wooden plank from the field of accused No. 3 Chimanbhai Patel. PW-14 Somabhai Saburbhai registered the complaint on the same day at 10.35 hours at Baroda Taluka Police Station as he was PSO In-charge. The crime was registered as Crime Register No. 91 of 1985 and investigation was entrusted to Head Constable Bhurabhai Matabhai. Head Constable Bhurabhai Matabhai took the charge of investigation at 12.05 at night and all the injured were at hospital and, therefore, Bhurabhai went to Shayaji Hospital and recorded the statements of the injured. On the next day i.e. on 31st of May, 1985, he visited village Sherkhi and draw the panchnama of scene of offence i.e. the house of victim Khusal Shamal. While he was drawing the panchnama of scene of offence, he came to know that Khusal Shamal had died and his dead body was lying in the field of accused No.3 Chimanbhai Patel. He then visited the field of accused No.3 Chimanbhai Patel and found dead body of Khusal

Shamalbhai and in the presence of panchas, an inquest panchnama was also prepared. From that place, sample earth as well as blood stained earth was recovered by panchnama, and in the presence of panchas, a panchnama of scene of offence where the dead body was lying was also drawn by Bhurabhai. A postmortem was conducted and it was found that the death was due to head injury and final cause of death at that time was kept pending till the report of Chemical Analyzer about stomach contents. It appears that, the investigation thereafter was transferred to Babubhai Ishwarbhai Patel, Senior PSI, Baroda Taluka Police Station and he recorded the statements of other witnesses, arrested all the four accused and submitted charge sheet against all the four accused for the above said offences in the Court of learned Judicial Magistrate, First Class. Case thereafter was committed to the Court of Sessions and learned additional Sessions Judge framed charges against all the four accused vide Exhibit-1 on 7.1.1986. Each of the accused pleaded not guilty and, hence, prosecution was asked to tender the evidence to prove its case.

4 The prosecution examined as many as 16 witnesses and submitted on record voluminous documentary evidence. After the evidence was over, statements of each of the accused came to be recorded by the learned Trial Judge under Section 313 of the Code of

Criminal Procedure where each accused denied the prosecution case in toto. Learned Trial Judge thereafter heard prosecution and the defence and came to the above conclusion to acquit all the accused from all the charges levelled against them and, hence, this Appeal by the State.

5 Learned APP Mr. I.M. Pandya submitted vehemently that dead body of Khusalbhai was recovered from ravines situated in the field of accused No.3 Chimanbhai Patel and this fact is proved and is required to be explained by the accused. This important aspect has not been taken into consideration by the learned Trial Judge. It is submitted that the incident in question occurred in broad day light and prosecution witnesses knew each of the accused as witnesses as well as accused belonged to the same village. It is submitted that there are five eye witnesses to the incident and four of them are injured. However, out of four injured witnesses, three injured witnesses are examined by the prosecution and their injuries are proved by the medical evidence i.e. through PW-2 Dr. Pravinbhai Keshavlal. It is submitted that there is no reason to disbelieve the injured witnesses in respect of the occurrence of the incident which occurred at 4.00 p.m. in the house of the victim. Homicidal death of the victim Khusalbhai is proved by PW-1 Dr. Pankaj Haridas and the prosecution is able to establish the motive. It is submitted that some of the witnesses, even eye witnesses, have turned

hostile, but three witnesses i.e. Surajben, Devuben and Gangaben - complainant have supported the prosecution case so far as the incident which occurred at 4.00 p.m. in the house of the victim is concerned and all the three witnesses have stated that victim was dragged by accused Nos. 1 and 2 from his house to the field of accused No.3 where he was done to death by all the four accused. It is submitted by learned APP that totality of the circumstances and overall version of the prosecution witnesses, though some of them are hostile, indicates that the prosecution is able to prove the case against all the accused beyond doubt. It is submitted that the judgment and order impugned in this Appeal, therefore, is erroneous, illegal and unjust and the conclusions are not based on proper appreciation of evidence of injured eye witnesses. It is, therefore, submitted that appeal be allowed and remaining three respondents of the Appeal be convicted for the offences alleged against them.

6 While learned Advocate Mr. Atul H. Mehta for the respondents submitted that though the homicidal death of Khusalbhai is not much in dispute, but there is no evidence connecting the accused with the crime. It is submitted that the prosecution has examined as many as 16 witnesses, out of which, five are the eye witnesses and three of them did not support at all the prosecution case. Two other eye

witnesses of the incident took place in the field of accused No.3 Chimanbhai have also not supported the prosecution case. While the case hinges upon the evidence of three remaining eye witnesses, namely, (i) PW-4 Gangaben Raijibhai Exhibit-27; (ii) PW-8 Exhibit – 32 Surajben and (iii) PW-5 Exhibit -29 Devuben, their evidence requires to be scrutinised very carefully. It is submitted that the learned Trial Judge in detail appreciated and scanned the evidence of these three witnesses scrupulously and came to the conclusion that none of these three witnesses inspired any confidence as to connect any of the accused with the crime. It is submitted that as discussed by learned Trial Judge in his judgment in para-13, para-17, para-18 and para-21, the evidence of prosecution more particularly the evidence as to the finding of the dead body was found from the field of accused No.3 – Chimanbhai is tainted and cannot be accepted, but even then, that circumstance alone would not saddle any of the accused with the liability of the crime alleged against them. Learned Advocate Mr. Mehta relied upon a decision of the Apex Court in the matter of MOUSAM SINGHA ROY vs. STATE OF WEST BENGAL, as reported in 2003 (12) SCC 377 and particularly paragraphs 8 and 9 of the said judgment about the circumstantial evidence and submitted that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn and in the first instance be fully established, and all

the facts so established should be consistent only with the hypothesis of the guilt of the accused. It is submitted that the prosecution failed to establish beyond doubt the fact that the victim was dragged to the field of Chimanbhai by accused and he was done to death in the field. Therefore, even if it is believed for the sake of argument that the dead body was found in the field of accused No.3 that, circumstance alone is not sufficient to convict any of the accused. It is submitted that the learned Trial Judge, in para-23 of the judgment, has discussed this aspect in detail and has come to the right conclusion. The learned Advocate relying upon a decision of the Apex Court in the matter of DHANNA Vs. STATE OF MADHYA PRADESH, as reported in AIR 1996 SC 2478, submitted that while dealing with an appeal against the acquittal, the appellate court has to bear in mind that there is a general presumption in favour of the innocence of the person accused in criminal cases and that presumption is strengthened by the acquittal. Further every accused is entitled to benefit of reasonable doubt regarding his guilt and when the trial court acquitted him, he would retain that benefit in the appellate court also. It is, therefore, submitted that the orders of the acquittal should not lightly be interfered with and particularly in this case when the evidence on record has been appreciated by the learned Trial Judge in detail and very carefully and when correct conclusions are drawn from the facts discussed, the

question of interference in the judgment and order impugned in this Appeal would not arise at all. Supporting the judgment and order impugned in this appeal, it is submitted that the Appeal of the State against the acquittal be dismissed.

7 This is an Appeal against the order of acquittal of the Trial Court. The scope of the appeal is well defined and settled. High Court as an appellate court has same powers in appeal against the orders of acquittal as it has in an appeal against an order of conviction. Independent assessment of evidence recorded during the trial is necessary in appeals against the order of acquittal as well. The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the Trial Court, but the findings and the conclusions of the Trial Court must not be lightly interfered with in Appeals against the acquittal, unless such findings are against the weight of the evidence on record and/or perverse. This is so because it must be borne in mind that the presumption of the innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in the favour of the accused by the Trial Court. There may be another view possible from the appraisal of the evidence on record. In these circumstances also, the view favourable to

the accused should be adopted. What is to be borne in mind is that the Trial Court had the advantage of looking at the demeanour of the witnesses and observing their conduct in the court especially in the witness box and, hence, while re-appreciating the evidence recorded during the trial, this scope of the appeal against the order of acquittal must be kept in mind.

8 In view of above, we have undertaken a complete and comprehensive appreciation of all vital feature of the case and the entire evidence on record with reference to the broad and reasonable probabilities of the case, with reference to the contentions raised in this appeal and also having regard to the reasons recorded by the Trial Court for acquitting the accused, have been carefully scanned.

9 The prosecution case, as has been disclosed by the evidence placed on record, can be divided in following three parts :

First part of the incident had occurred at 2.00 p.m. at the house of complainant Gangaben in the presence of Revaben and Surajben as well as in the presence of Raijibhai, wherein accused No.1 Balvantsinh Parbatsinh came to the house of Gangaben and inquired about deceased and about wooden plank which the deceased had taken from

the field of accused No.3 Chimanbhai. In this incident, Gangaben offered the price of the wooden plank which accused No.1 denied and stated that he would be returning with his brother.

Second part of the incident occurred at 4.00 p.m. in the house of deceased Khusalbhai Shamalbhai wherein two accused i.e. accused No.1 Balvantsinh Parbatsinh and accused No.2 Amarsinh Parbatsinh visited the house of deceased Khusalbhai. Balvantsinh Parbatsinh had a dharia with him while Amarsinh had a stick with him. They entered the house of the deceased and started beating him. While witnesses tried to intervene, Balvantsinh Parbatsinh inflicted injuries by dharia on Raijibhai and Devuben. Revaben also got injuries of dharia by accused No.1 Balvantsinh Parbatsinh. Amarsinh Parbatsinh accused No.2 inflicted blows by stick on witness Surajben as well as accused No.1 Balvantsinh Parbatsinh also inflicted blows by dharia on the body of Surajben and thereafter these two accused dragged deceased Khusalbhai towards the field of accused No.3 - Chimanbhai Patel and he was tied with electric pole.

The third part is the last sequence of the above two, wherein the prosecution case is all the four accused started beating Khusalbhai in the field of accused No.3 Chimanbhai Patel on account of which Khusalbhai

died and this incident was witnessed by PW-9 Govindbhai Devjibhai and his wife PW-10 Shantaben Govindbhai, both are examined at Exhibits 33 and 34.

10 With reference to the above, now we shall appreciate the evidence of the witnesses. Important witnesses is a cluster of witnesses who were injured and eye witnesses and other eye witnesses. As afroresaid, the incident which occurred at 2.00 p.m. at 4.00 p.m., there were four injured witnesses and they are (i) Revaben Bijalbhai, (ii) Devuben Chimanbhai, (iii) Raijibhai Shamalbhai and (iv) Surajben Dhayabhai. Out of these four witnesses, injured Devuben Chimanbhai is examined at Exhibit-29 as PW-5, Surajben Dhayabhai is examined at Exhibit-32 as PW-8 while Raijibhai Shamalbhai is examined at Exhibit -31 as PW-7 and fourth witness Revaben Bijalbhai was not examined by the prosecution. In addition to these three injured eye witnesses, other eye witnesses are PW-4 Gangaben Raijibhai – Complainant and Laliben Khusalbhai, widow of the deceased and, therefore, so far as the incidents occurred at 2.00 p.m. and 4.00 p.m. are concerned, prosecution examined in all five eye witnesses. Out of which, three witnesses, as aforesaid, are injured witnesses and their injury is proved by PW-2 Dr. Pravinbhai Keshavlal, who is examined at Exhibit-19 and in his deposition he produced on record, certificates at Exhibits 20 to 23.

According to Dr. Pravinbhai, all these four injured witnesses including Revaben had been to hospital at 10.55 p.m. along with police yadi of Baroda taluka police Station.

11 Out of the above five witnesses, PW-6 Laliben Khusalbhai is examined by the prosecution at Exhibit-30. She stated in her examination-in-chief that she heard that accused had taken her husband Khusalbhai, but she did not know who had taken her husband. She stated that her daughter Manjula on the next day came to her and stated that dead body of her father (Khusalbhai) was lying in the ravines of river and, therefore, she visited that place and found dead body of her husband. She denied the fact that how her husband met with death. She was declared hostile and has been cross-examined and confronted with her police statement.

12 Likewise, second eye witness Raijibhai Shamalbhai – Exhibit-31 is examined as P.W. No.7. He did not support the prosecution case and stated that he did not know anything about the incident. He was also confronted with his police statement in his examination-in-cross by learned APP but he deposed that he had not stated what was alleged to have stated by him in police statement.

13 Now out of five eye witnesses, above said two witnesses

have turned hostile and, therefore, the evidence of the remaining three eye witnesses is now required to be appreciated.

PW-4 - Gangaben is examined at Exhibit-27, who has preferred the complaint, stated in her examination-in-chief that at about 2.00 p.m. her devar (younger brother of the husband – Khusalbhai, the deceased) had been to jungle for grazing cattle, accused No.1 came to her house and inquired about wooden plank. She requested accused No.1 to forgive them and thereafter accused No.1 left the house of the witness. At about 4'O clock, Balvantsinh Parbatsinh returned along with his brother Amarsinh and both of them dragged Keshubhai to the filed of accused No.3 Chimanbhai. According to witness, at that time, she, Revaben, Surajben intervened and they received injuries in the incident. She stated that she could not say that who had beaten her and she first went to police station and thereafter to the hospital. She stated that she could not say whether any weapons were seen by her in the hands of any of the accused at the time of the incident. In her examination-in-cross, she stated that from her house, the field of Chimanbhai Patel was situated at a distance of 4 kms. She further stated when first time Balvantsinh visited her house, wife of deceased offered amount to Balvantsinh and after accepting that amount, Balvantsinh had left. In examination-in-cross, she further stated hat

when both the brothers came to her house and she did not witness what happened at that time. She did not witness that they had taken deceased Khusalbhai with them.

While PW-5 Devuben Chimanbhai is examined at Exhibit-29 and stated that at 2'O clock all the four accused visited their house and on informing by her son, she came out of her house and noticed that all the four accused were taking away Khusalbhai. She requested all the accused not to beat Khusalbhai but Balvantsinh Parbatsinh inflicted a dharia blow on her hand. Blunt part of dharia caused injuries to her. Thereafter, she became unconscious and regained consciousness on the next day in the hospital where she came to know that the accused had killed Khusalbhai. She further stated that Gangaben and Laliben along with Surajben were present there. Surajben had injury on her head and the said injury was caused by stick blow given by accused No.1. Revaben was also injured by dharia blow given by accused No.1. Even a blow was given by Balvantsinh to Raijibhai with dharia. In her examination-in-cross she stated that on next day her statement was recorded. She was indoor patient in the hospital for one month. They reached at the police station at 6.00 p.m. and thereafter they went to the hospital at 7'O clock. In her cross-examination she confirmed that the incident had occurred at 2.00 p.m.

He denied other suggestions that no such incident had taken place at 2.00 p.m.

Third eye witness Surajben Dhayabhai, PW-8 is examined at Exhibit-32. She stated that she had been to Sherkhi to the house of her brother Raijibhai and Khusalbhai from Bhalej. The incident occurred near the house of deceased Khusalbhai. The dispute had arisen in respect of wooden plank, accused Balvantsinh and Amarsinh had come and had started beating deceased Khusalbhai and both of them had pushed her and she had fallen on the ground. Both the accused had dragged Khusalbhai from his house and on next day she came to know that her brother Khusalbhai had died. In her examination-in-cross, she stated that she was permanently residing at village Bhalej. She denied that police had recorded her statement. She denied that any incident had occurred at 2.00 p.m. She denied the suggestion that no incident which she narrated had ever occurred.

14 This is the evidence of these three eye witnesses, on which the whole prosecution case is based. This is so because if the incident occurred at 2.00 p.m. and 4.00 p.m. is proved, then prosecution is said to have proved the fact that Khusalbhai was taken by two of the accused to the field of accused No.3 Chimanbhai and there Khusalbhai was done

to death by all the four accused. In this respect, the learned Trial Judge observed in para-13, appreciated the evidence of Gangaben and stated that having regard to her examination-in-chief and examination-in-cross, gross contradictions were found in her complaint as well as in her deposition. Particularly the learned Trial Judge referred to her examination-in-cross wherein she stated that she did not notice what happened at 4.00 p.m. and she did not notice that Khusalbhai was dragged and taken away by two accused from the house of Khusalbhai. Detailed reasons were given by the learned Trial Judge for not believing this witness in para-13. When we appreciated the evidence of complainant Gangaben, we also found that her evidence is tainted by falsity and has been weakened. In examination-in-chief when she refers to the incident occurred at 4.00 p.m. and in her cross-examination she herself denied to have noticed any incident which might have taken place at 4.00 p.m. We have no reason to take a different view than taken by the Trial Judge in placing reliance upon these witnesses for the detailed reasons. What is found is, no credit or weight can be attached to the say of Gangaben on account of self-contradiction found in her deposition. Out of the rest two witnesses, i.e. witness Devuben only stated about the incident of 2.00 p.m. and in contradiction to the prosecution case as well as the say of complainant Gangaben, she denied that any incident had occurred at 4.00 p.m. She stated in her

deposition that the incident had taken place at 2.00 p.m. wherein all the four accused visited the house of Khusalbhai and he was dragged by the accused and was taken to the field of accused No.3 Chimanbhai. This is not even the case of the prosecution originally as disclosed in the complaint and by other witnesses. Her evidence in detail has been discussed by the learned Trial Judge in para-17 of his judgment and according to us the learned Trial Judge rightly did not place reliance on the disposition of this witness for the reasons recorded by him in para-17.

15 While only remaining third eye witness Surajben stated that the incident had occurred about the wooden plank and two accused i.e. accused No.1 Balvantsinh and accused No.2 Amarsinh had started beating deceased Khusalbhai and she was pushed and had fallen on the ground. It is important to be noted that she refers to only incident and whether it was the first incident or second has not been stated by her. She did not state anything about the injuries received by her nor injuries received by any other witness. This is sufficient ground for not placing reliance by the Trial Court upon this witness.

16 So, the Trial Court rightly did not place any reliance on any of these three eye witnesses for detailed reasons as discussed by the

Trial Court, as above said. True that, minor discrepancies and variations in prosecution case, may not affect the main story of the prosecution and on the contrary minor variations in deposition of witnesses is quite natural, as parrot like versions are disfavoured by the courts being unnatural. It is also true that the appreciation of the evidence of the witnesses must be undertaken in the background of other circumstances appearing in the particular case. Rustic witnesses may not give an exact version of what they might have witnessed long ago, but this is not the case where there are minor contradictions or variations in depositions of rustic witnesses. This is a case wherein the core of the prosecution case is shaken by what is stated by these three witnesses. Firstly, the witnesses have made improvements in their depositions and secondly the contradiction amongst the depositions of these three witnesses, renders the prosecution case improbable, unacceptable and credibility of each of the witnesses is shaken to the extent that it becomes unsafe to place any reliance on such deposition. The credibility of a witness is a matter, not regulated by rules or procedure. It is the natural things and simplicity in manner of deposing which inspires the confidence in spite of variations in the say of witnesses, in the mind of the court as to the credibility of witnesses. When it is found that witness deposes as contradicting facts, stating something in chief-examination and stating contrary facts in examination-in-cross, is not

worthy of credit irrespective of the background of the witnesses, particularly when witnesses are deposing what is not the prosecution case. It becomes difficult to attach any weight to their depositions. When it is found that a witness is made deliberate, false statement in deposition, then only conclusion which can be arrived at by the courts while appreciating the evidence is that the witnesses are utterly unreliable and there cannot be any guarantee of a truth of the statements made by such witness. While we agree with the reasons given by the Trial Court for not placing of reliance upon these three witnesses as the Trial Court has given detailed reasons, we only add that the contradiction amongst the depositions of three witnesses as well as contradictions and omissions made by the witnesses from the original prosecution case, on our independent assessment also, lead us to believe that these three witnesses are not the witnesses to the truth and no credit can be attached to their depositions.

17 When as aforesaid, the incident had occurred at 2.00 p.m. i.e. first part of the prosecution case and the incident which had occurred at 4.00 p.m. i.e. second part of the prosecution case, could not be proved beyond reasonable doubt. Though the injuries on each injured are proved by PW-2 Dr. Pravinbhai Keshavlal, but unfortunately, it could not be established that those injuries were received by each injured in

the incident occurred at 4.00 p.m. i.e. second part of the prosecution case, as discussed in detailed above.

18 Now when we come to the third part of the incident, wherein the prosecution case is, the two accused i.e. accused No.1 Balvantsinh Parbatsinh and accused No.2 Amarsinh Parbatsinh dragged deceased Khusalbhai to the filed of accused No.3 Chimanbhai and he was tied with electric pole and was beaten to death. As per the prosecution case, there were two eye witnesses of the third incident, who had witnessed the incident taken place in the field of Chimanbhai Patel. Those witnesses are PW-9 Govindbhai Devjibhai, Exh. 33 and his wife PW-10 Shantaben Govindbhai, Exh.34. Both these witnesses are only eye witnesses of the third part of the prosecution case but none of these witnesses supported the prosecution case, though both of them have been declared hostile and have been confronted by learned APP with their police statements in examination-in-cross. So, therefore, the third part which is essential part of the prosecution case also could not be proved along with the first part and second part of the prosecution case.

19 Then important circumstance which remains to be discussed is the finding of dead body, according to the prosecution case, from the field of Chimanbhai Patel, accused No.3. The evidence

of two witnesses in this respect is relevant and is to be appreciated and noted. Out of this, first is Mahendrasing Bapusing, PW-11, Exh. 38, a panch of panchnama at Exhibit-35, Exhibit-39 and Exhibit-40. In his deposition, he stated that at about 12.00 Noon, he was called by the police near the house of accused Chimanbhai Patel in ravines of river and near the house of accused No.3 where dead body of Khusalbhai was lying. A panchnama in this respect was executed and he had signed the said panchnama. This is an inquest panchnama and is produced at Exhibit - 35. The witness further stated in his deposition that thereafter the police showed him the place of offence and a panchnama was executed in this respect which he produced at Exhibit-39. This is a panchnama executed at 10.00 a.m. to 10.35 a.m. about the recovery of dead body near the house of Chimanbhai Patel – accused No.3. The last panchnama Exhibit – 40, according to this witness, was executed in respect of collection of sample earth and earth with blood of the deceased. According to the prosecution case, this inquest panchnama – Exhibit-35 was executed between 12.30 p.m. and 13.10 p.m. However, in his cross-examination, this witness Mahendrasing Bapusing, supporting these three panchnamas, stated that he was called by police at 12.00 noon and the work was over at 1.30 p.m. Field which is known “bid” is comprising of 70 acres. Behind this field there were ravines of river. He stated that at the relevant time he was

police patel of Sherkhi village. He admitted that on the same day, i.e. on the day he was called for the panchnama, at about 10.30 a.m. he was called by widow of deceased and she stated that dead body of her husband was found lying in ravines of river. The witness further stated in his cross-examination that along with sarpanch he visited those ravines and found dead body of Khusalbhai lying in those ravines of river. He further stated that the widow of deceased Khusalbhai had accompanied them.

20 The next evidence in this respect is the evidence of the first Investigating Officer, PW-15 Exhibit-44 Bhurabhai Matabhai wherein he has stated that he had drawn those panchnamas i.e. Exhibits, 35, 39 and 40. He stated in his deposition that the investigation of this crime was entrusted to him at the first instance and he visited village Sherkhi on the next day and came to know that Khusalbhai had died and his dead body was lying in the field of Chimanbhai Patel. He, therefore, went to the field of Chimanbhai and draw the above three panchnamas i.e. Exhibits 35, 39 and 40.

23 It must be noted that it could not be proved by the prosecution beyond doubt that all the four accused had dragged Khusalbhai from his house to the filed of accused No.3 Chimanbhai

Patel. The above evidence and the circumstance of finding of dead body of Khusalbhai from the field of accused No.3 is to be appreciated. When we scanned the evidence of Mahendrasing Bapusing, we noticed two important infirmities in his evidence. According to prosecution case, he was called by police at 12.00 noon. According to prosecution case and Investigating Officer Bhurabhai Pratapbhai, the first panchnama i.e. panchnama of finding of dead body i.e. Exhibit-39 was drawn at about 10.00 to 10.30 a.m. Thereafter, panchanams at Exhibit-35 and Exhibit-40 were drawn by the Investigating Officer. The second infirmity which we find from the deposition of Mahendrasing Bapusing is noticed from his cross-examination when he admitted to have visited ravines of river at the instance of widow of deceased Khusalbhai at about 10.30 a.m. It is his admission in examination-in-cross that at 10.30 a.m. he found the dead body of Khusalbhai in ravines of river along with widow of deceased Khusalbhai and sarpanch. This statement made by this witness, diminishes the credibility and the weight to be attached to this witness. No reliance can be placed on this witness about finding of dead body from the field of accused No.3 Chimanbhai and consequently serious contradiction arises in the deposition of this witness as well as in the evidence of the Investigating Officer Bhurabhai. At least on our independent assessment of this circumstance, it is no doubt that, the evidence of finding of dead body from the field of accused No.3 is not

free from doubt and in these circumstances this doubt must be resolved in the favour of the accused, otherwise also in absence of proving the first and second part of the prosecution case, the finding of dead body from the field of accused No.3 by itself is not the circumstance which would lead to link accused in the crime. The settled law as to the circumstantial evidence is clear that when a case is to be believed on circumstantial evidence, then each link of the whole circumstances must be proved and lone link cannot form the basis of the conviction of the accused. There may be many hypothesis arise in the circumstances specially in the absence of evidence that whether the house of Chimanbhai which was involved in the incident was inhabited or not. For example shifting of dead body from ravines to the field of accused No.3 cannot be discarded and this circumstance is inconsistence with the guilt of the accused. It must be borne in mind that the whole land is about 70 acres of barren waste land. What is required by the prosecution is to establish beyond reasonable doubt the connection between accused No. 3 and finding of dead body from the field of accused No. 3. Unless these two circumstances are proved to have existed or interconnected as to negative any other probability or possibility, then and then only the alleged circumstance of finding of dead body from the filed of Chimanbhai can be useful to the prosecution. This is so because the cardinal principle is not only the

circumstance must be proved so as to form a chain and each link must be proved to hold accused guilty but those circumstances must be inconsistent with the innocence of the accused. The gap which this circumstance leaves for the court to appreciate is whether it is the accused No.3 and 3 only who kept the dead body in his field or there were other probabilities of finding the dead body from the field of accused No.3. The evidence in this case that this circumstance alone is inconsistent with the innocence of the accused could not be established by the prosecution as there are many many probabilities which may arise while appreciating this circumstance that there may be so many other reasons including planting of body in the field of the accused No.3 and, therefore, even if the case is appreciated from this angle of circumstantial evidence, the prosecution could not establish the case against the accused beyond doubt. The other witnesses examined by the prosecution is PW-1 Dr. Pankajbhai Haridas who proved postmortem of dead body of Khusalbhai. It appears that the defence has no dispute as to the homicidal death of Khusalbhai which is stated and deposed by Dr. Pankajbhai PW-1. A tentative decision is given in postmortem note about the homicidal death on account head injury subject to the result of analysis of viscera but homicidal death by head injury appears to have attained finality. PW-3 Mahmadji Sulemanji Khatri has placed on record a map of scene of offence as the witness being revenue officer.

PW-12 Dhulabhai Manilal, Exhibit- 41 and PW-13 Keshavbhai Kalidas Exh. 42 are the witnesses examined by the prosecution as panch witnesses to the panchas of recovery/discovery of panchnamas, the weapons from the accused though none of the witnesses have supported the prosecution case but we could not find any such panchnama as has been referred by the prosecution in the evidence of these two witnesses. We have discussed the evidence of remaining witnesses, as aforesaid.

24 The learned Trial Judge ultimately appreciated the evidence and recorded his conclusion in paras 21 and 22 of his judgment and we do not find conclusion exceptionable after going through the record carefully and scanning the evidence as aforesaid. In this view of the matter, no interference is required in the judgment and order impugned in this Appeal and, hence, following order :

> " The appeal stands dismissed against respondents No. 1, 2 and 3 and appeal is abated against respondent No.4, as aforesaid. Bail bonds submitted by each of the respondents stand cancelled."

(J. R. VORA, J.)

(B. N. MEHTA, J.)

pnnair